

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ABITSCH & ABITSCH, LLC,
Plaintiff,
v.
DARUKA WANIGATUNGA,
Defendant.

Case No.: C12-1039 JSC

REPORT AND RECOMMENDATION TO REMAND CASE (Dkt. No. 1)

Defendant.

17 Defendant Daruka Wanigatunga has removed this unlawful detainer action to federal
18 court for the third time. (Dkt. No. 1.) Defendant's previous assertions that removal was
19 proper because Defendant planned to file a counter-complaint against Plaintiff based on the
20 Federal Debt Collection Practices Act ("FDCPA") were rejected and the case remanded. See
21 Case No. 11-4833, Dkt. No. 11 (Oct. 7, 2011 Remand Order), Case No. 11-5319, Dkt. No. 10
22 (Jan. 25, 2012 Remand Order). Defendant now alleges that "[a]fter the matter was remanded,
23 Plaintiff finally produced documents and other things requested well before the initial removal
24 . . . [which] indicate that a federal question exists and that this matter is properly in the federal
25 court." (Dkt. No. 1 at 3.) Based on this purportedly new information, Defendant maintains
26 removal to federal court is proper since Defendant intends to use this new information to file a
27 counter-complaint against Plaintiff that raises a federal question. (Dkt. No. 1 at 4-5.) This is
28 precisely the same argument Defendant previously made and lost.

1 Proper removal requires a federal question to appear “on the face of the plaintiff’s well-
2 pleaded complaint,” and a counter-claim that presents a federal question does not create
3 removability. Takeda v. Northwestern Nat. Life Ins. Co., 765 F.2d 815, 821-22 (9th Cir.
4 1985). The information Defendant would use to craft this counter-claim, whether it was
5 produced by Plaintiff before or after the case was previously remanded, is irrelevant. And
6 even if Plaintiff had, in fact, made a counter-claim, any federal question in the counter-claim
7 would not create removal jurisdiction.

8 Accordingly, the Court recommends that this case be REMANDED to the Superior
9 Court of the State of California, City and County of San Francisco.

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11 **IT IS SO ORDERED.**

12 Dated: March 6, 2012

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15 JACQUELINE SCOTT CORLEY
16 UNITED STATES MAGISTRATE JUDGE